

ISSUE DATE:

Feb. 14, 2007

DECISION/ORDER NO:

0400



PL050088

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

1497039 Ontario Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 86-50 of the Township of Lake of Bays to rezone lands respecting Part of Lot 18, Concession 14 (Franklin Ward) from "Rural (Ru)" to "Extractive Industrial with an Exemption [MX-E(674)] and "Rural with an Exemption [Ru-E(675)] to permit a dimensional stone quarry and a landscaping business
O.M.B. File No. Z050019

1497039 Ontario Limited has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, determination and settlement of details of a site plan for lands composed of Part of Lot 18, Concessions 14 (Franklin Ward) in the Township of Lake of Bays
O.M.B. File No. M050016

APPEARANCES:

Parties

Counsel*/Agent

1497039 Ontario Limited

D.S. White*

Township of Lake of Bays

M.E. Fiton*

Peninsula Lake Association

B. H. Kussner*

David and Janet Walker

Janet and David Walker

DECISION DELIVERED BY K. J. HUSSEY AND ORDER OF THE BOARD

149703 Ontario Limited (Applicant) submitted applications for rezoning and site plan approval to the Township of Lake of Bays in order to develop a dimensional stone quarry, a processing area and a wholesale business on a parcel of land located at 2480 Highway 60, in the Township of Lake of Bays. Council for the Township refused the applications and those decisions have been appealed pursuant to Subsections 34(11)

and 41(12) of the *Planning Act*. The amendments to the Zoning By-law which the Applicant seeks are the following:

- From Rural (RU) to Restricted Rural with exemption [RU2-Eaa]
- From Rural (RU) to Extractive Industrial (EI)
- From Environmental Protection (EP) to Environmental Protection with an exemption [EP-Ecc]
- From Rural (RU) to Environmental Protection (EP)
- From Rural (RU) to Restricted Rural with an exemption [RU2-Ebb]

The Proposal:

The Applicant proposes to extract 18,000 tonnes of dimensional stone per annum, from an area of approximately 6.17 hectares within the 33.26 hectare property. The Quarry would operate from May to the end of October, Mondays to Saturdays between the hours of 6:00 am and 9:00 pm. The hours of operation would be shorter on a Saturday.

The portable equipment that would be used for extraction and processing would be loaders, trucks, dozers and an excavator. A rock drill would be utilized. Stripping and stone cutting would take place between 6:00 am to 9:00 pm; processing operations would be between 7:00 am and 7:00 pm.

The extraction process would require the use of explosives. Blasting would be monitored and a seismograph would be employed to measure vibration on nearby properties. Blasting would occur on weekdays between the hours of 8:00 am and 5:00 pm.

There would be no quarrying below the water table. Surface water quality would be monitored each year before extraction begins. Tree clearance is necessary around the extraction and that area would be staked until clearance would become necessary. The area to be cleared of trees would be limited to that prescribed on the proposed site

plan. Dust would be controlled in the extraction area by water trucks bringing in water from an external source.

In the processing area or contractor's yard there would be manual splitting and sorting stone that is moved by trucks from the extraction area. The stone would be loaded on trucks to be transported from the site. Materials would also be stored on site and a wholesale business would be operated from the contractor's area.

This proposal has been amended from that which was before Council. The amended proposal incorporates changes that would reduce the scope of the operation. The proposed extraction was reduced from 50,000 to 18,000 tonnes per annum. The extraction area was reduced from 11 hectares to 6.17 hectares and the size of the contractor's yard was also reduced. A guillotine and crusher previously proposed to be in the processing area has been removed. The effect of those changes would lessen considerably noise and activity in the processing area.

Site Description:

The subject site has a frontage of 380 metres onto the south side of Highway 60. It is well forested, mostly with deciduous trees. There is an access road from Highway 60 into the site which crosses an existing watercourse that flows across the property from east to west. This watercourse has been identified as a sensitive cold water, fish bearing stream. This stream discharges into a small bay at the north-east end of Peninsula Lake. Peninsula Lake is located approximately 690 metres south-west of the subject property.

Near the entrance, on the north end of the property there is a house and maintenance building. These are within the proposed contractor's yard. To the north, north-east and north-west of the subject property there are existing residences located on both sides of Highway 60. These are the residences of members of the Hillside community. The closest is 280 metres to the north-east.

Immediately to the west of the property, is Broomhill Farm a 183-acre farm with livestock, horseback riding and boarding facilities. This has been described by the

owner, Rupert Brendan as a heritage farm. It was settled in 1897 and is probably the largest farm in Muskoka. Mr. Brendan testified that riding trails extend to the eastern boundary of the farm, which is shared by the proposed quarry.

There are two operating legal non-conforming dimension stone quarries in the immediate vicinity. Immediately east of the subject property is the MacFadden quarry and one kilometre east of the subject site, north of Highway 60, is the VanDyke quarry. These quarries supply builders and landscapers, including the Applicant, with dimension stone.

The proposed area of extraction is located to the south of the subject property on the knob of a hill that overlooks Peninsula Lake and residences that are located on the lakeshore. In the central and far southeast portion of the subject property there are wetlands.

Background:

Members of this community embarked on a process in 1995 to establish the 'vision' for the first comprehensive Official Plan for the Township of Lake of Bays. This process involved over 55 public meetings between July and October 1995 and there was a high level of participation. Over one thousand residents participated from a population of 3000 full time residents and 13,000 seasonal residents. The background of the plan describes in detail the process that was undertaken and noted that the process was as important as the vision because the future of the community was entrusted to the residents of the Township.

A similar community based approach was undertaken by residents of the Peninsula Lake area in the preparation of the Peninsula Lake Plan (2001). This Plan constitutes part of Amendment No. 6 to the Official Plan of Lake of Bays, the purpose of which is the establishment of more specific planning policies for the areas designated "waterfront" and "rural" in the Peninsula Lake watershed, where the subject property is located.

In August 2002 the Corporation of the Township of Lake of Bays responded to complaints from residents of the area that there was noise coming from the location of the subject site. These complaints were investigated by the Township which revealed that indeed there was quarrying activity on the site. The Township brought a motion before Superior Court of Justice for an injunction to prevent further quarrying on the site. The Applicant claimed to be under the impression that the subject site was a legal non-conforming quarry. An interlocutory injunction was issued August 30, 2002 requiring that activity cease. Instead of proceeding to a full hearing of the matter the Applicant opted to pursue re-zoning.

The application has met with vigorous and widespread opposition from members of the Community and by the Township of Lake of Bays.

The Hearing:

This hearing began on October 31, 2005, and was interrupted on the fourth day when the parties realised that the matter was not properly before the Board. The By-law that the Applicant then sought to amend had been repealed by the new comprehensive Zoning By-law 2004-181. The hearing adjourned sine die for the site plan approval and a new application for the Zoning By-law amendment and was before the Board on July 10, 2006. This matter consumed 13 days during which time there was an extremely well attended evening session. There were location visits to the subject site, the lake and two residences on the lake shore.

The Board heard evidence from 36 witnesses and received 76 exhibits. Among the expert witnesses were four land use planners; Planner Gary Bell in support of the application; Planner Anne Guiot, with special expertise in aggregate resources, also in support of the application; Planner Derryck Hammond, opposing the application in support of the Township's position and Planner Janet Amos, retained by the Peninsula Lake Association, opposing the application.

There were two acoustic engineers; John Emiljanow, retained by the Applicant and John Coulter retained by Peninsula Lake Association. Two hydro-geologists gave evidence; Geoff Rether in support of the Applicant's position and Bill Steibel in support

of the position held by Peninsula Lake Association in opposition to the application. Mr. Steibel appeared as a panellist with Michael Lord, an environmental site assessment expert. Sean Miller, an aquatic ecologist, was retained by the Applicant to provide evidence on environmental features on the subject property and to supplement the findings of Krytawyn Environmental Consulting. Robert Cyr, an engineer specialising in blast monitoring, blast design and vibration analysis, was retained by the Applicant and gave evidence to the Board.

The Planning Scheme:

The subject property is designated "Rural" in the Official Plans for the District of Muskoka and the Township of Lake of Bays. Within a "Rural" designation quarries are a permitted use. While quarries are a permitted use in the area, the foremost consideration is the tourism base of Muskoka. The District's Official Plan stipulates that resource development should not conflict with the tourism base. The District Plan stipulates that quarrying shall not be permitted to occur where it would require elimination of significant landscape features and scenic vistas, which the plan states are vital to the tourism industry.

The Township's Official Plan Policy F.28 requires a zoning by-law amendment for establishing a new pit or quarry operation and the applicant has to address to the Town's satisfaction the following matters for the zoning by-law to be amended:

- appropriateness of the location;
- identification of the quality and extent of the resources;
- protection of surface and ground water;
- protection of environmentally and aesthetically sensitive areas or features;
- impact on the surrounding uses and property;
- impact on transportation route and access to the site; and

- identification of the limit of extraction.

The Township sets out among its objectives, recognising the tourist commercial, service commercial and recreational sectors as vital components of the Township's heritage and economic base, which should be supported, preserved and enhanced and that this economic foundation should be diversified with small business and light industry. It also sets out the importance of protecting primary resources where appropriate.

The plan gives detailed direction on how growth is to occur. It sets out the principles governing growth including maintaining the integrity of the natural environment and landscape; preserving aesthetic values and scenic areas; preserving and complementing the character and heritage of the Township. It states that economic and financial impact should be beneficial to the Township.

The Issues:

1. The Township's Issues:

- a) The Township of Lake of Bays (Township) opposes the application on the grounds that the development would cause visual impact that would offend the policies and objectives of its Official Plan. The Town contends that the location is inappropriate and this must be viewed in light of compatibility and character, particularly in context of the "character provisions" of the Township's Vision Statement and Official Plan.
- b) There is limited ability by the Township to enforce Site Plan control provisions.

2. Peninsula Lake Association's Issues:

Peninsula Lake Association represents 254 voting members or approximately 500 individuals. The membership consists of

permanent and seasonal residents, businesses and Industry, among which are quarries, hotel, inns and restaurants.

- a) This organization shares the Township's concerns regarding visual impact, character and compliance with the Township of Lake of Bays Official Plan as well as the District of Muskoka Official Plan.
- b) The association was actively involved in the preparation and development of the Peninsula Lake Plan, the purpose of which is to protect the quality of life around the lake.

The Community values established for this plan are water quality, natural sustainability and lake character. The Association's position is that those values would be breached by this development.

- c) Noise from the operation is a significant concern. The members of the association have had first hand experience with the noise levels that emanate from a stone quarry on this site. During an eight-month period in 2002, quarrying activity occurred on the site before the Courts issued an interlocutory injunction requiring the Applicant to cease operation.

3. Janet and David Walker's Issues:

Janet and David Walker are seasonal residents whose cottage is located at 1088 Shaws Road, some 800 metres from the subject site. The cottage has been in the family since 1956. They use their cottage extensively and although they are members of Peninsula Lake Association, they were parties at these proceedings.

- a) Their concern is that the area now has an abundance of wildlife and forest; it is a peaceful recreational area unmolested by industry. A quarry 800 metres from their property would change the character and threaten the natural and historic usage of the land by introducing an incompatible use.

4. Hillside Neighbours Issues:

Hillside neighbours were participants at the hearing and were represented by Janet MacDonald. This is a group of 40 residents in close proximity to the subject site, in the Community of Hillside, on Highway 60 and Millar Hill Road. Although there are legal non-conforming quarries currently operating in the area, Ms MacDonald testified that the neighbours had never been so affected by those operations as they were during the period when there was quarrying activity on the subject site.

- a) During that eight-month period in 2002 the residents of Hillside received the greatest impacts from noise, dust and vibration. The evidence was that enjoyment of their property was greatly diminished.
- b) The cumulative effect from all the quarries in the area if this application is allowed is of great concern to the Hillside residents.
- c) Highway traffic safety, particularly, with the location of the truck inspection station to the south of Highway 60 in close proximity to the entrance of the subject site, is an important issue.
- d) The effect of the operation on the private wells of residents in the area is also of great concern to this group.
- e) Based on the 2002 operation on the subject site, the residents are sceptical that future control and monitoring can successfully be achieved. Property damage to some homes occurred in 2002 and that remains an issue.

5. Lake of Bays Association's Issues:

Lake of Bays Association had participant status at this hearing. Counsel for the Association, Karl Jaffary, presented a statement on its behalf. This association has 1400 to 1500 families as members.

As with Peninsula Lake Association, Lake of Bays Association has a significant number of year-round residents and business people among its membership.

Many of its members were involved in the process of developing the Township's Visioning Statement, Official Plan and the Implementing Zoning and Development Permit By-laws.

- a) It is their position that the natural beauty of the surroundings is the real basis for the economy and that change should be governed by the goals set out in the Official Plan to nurture and sustain the health and allure of the environment and to encourage those economic opportunities that respect the character of the Township. The association considers that the area, its tranquility and allure is at risk by this development. This in turn is a risk to the economy.

Applicant's Position:

The president and owner of 149703 Ontario Limited (Applicant) is Kristian House. Mr. House has a full service landscaping business and specializes in stone work. Dimension stone of the type found on the subject site is used extensively in his business. He provides services to large commercial developments including area hotels and to cottagers for waterfront construction and landscaping.

Mr. House owns an aggregate producing quarry in Huntsville. He claims to have extensive personal knowledge of the quality and type of stone found in the area. He purchased the subject site in 2001 because, in his assessment, it is a good source of this unique local granite, found only in the area within a stretch of approximately 14 kilometres.

The Applicant submits that the requirements for the Zoning By-law amendment have been met and the Application conforms to the policies of both Official Plans.

Appropriateness of the Location:

The Applicant has argued that the location is not within a sensitive area. The character of the area is already defined by other quarries in the vicinity that are currently in operation; the MacFadden quarry is located immediately east of the subject site and the Van Dyke quarry is one mile east, to the north of Highway 60.

The stone that is contained on the property has unusual characteristics and is not widely available. It is in demand and consumed by the local market and the location is consistent with the Provincial Policy Statement which directs that “as much of the mineral aggregate resources as is realistically possible shall be made available as close to market as possible.”

The residents in the area, the Township and the Peninsula Lake Association disagree with the Applicant’s position. They contend that the location is simply wrong. The subject property is located within an established rural community, in close proximity to approximately 18 residences and a farm immediately adjacent and the site is visible from Peninsula Lake. The impacts are directly based on the location. The proposed use, they submit is incompatible with the surrounding uses and the character of the area and this conclusion is based on their experience from the operation in 2002.

Members of the Hillside Community testified that although there are other quarries in the vicinity, those quarries have no notable effect on the neighbours. The Van Dyke quarry is located two miles east of the residences. The MacFadden quarry, located east of the subject site, is in a valley, buffered by the surrounding hills. The proposed quarry is on a hill, which one witness likened to a natural amphitheatre based on his experience when the quarry operated in 2002. The contractor’s yard on which processing and rock-splitting is proposed is approximately 60 to 90 metres of the property line of abutting residences. Mr. MacDonald, who with his wife Janice, lives directly across the entrance to the subject site, are able to see the contractor’s area during leaf off condition from October to May.

Mr. and Mrs. MacDonald gave evidence that the summer of 2002 they were subjected to unbearable conditions. They moved the location of their bedroom to the back of the house because of excessive noise coming from the subject site; they were unable to carry on normal conversation without raising their voices. Mrs. MacDonald

testified that the constant noise from operational activities “jarred their nerves”. They accepted any opportunity to be away from their home that summer. Dust was a major nuisance for them that summer. Even with windows closed, all summer their furniture had to be dusted daily and this, Mrs. MacDonald testified, was generally the experiences of their neighbours.

Rupert Brendan, the owner of the adjacent farm testified that the farm has livestock of sheep, cows and horses and that he also operates horseback riding and boarding facilities. He noted in his testimony that the mixture of explosives and horseback riding is particularly volatile and dangerous. Mr. Brendan said that his income would be affected without boarding horses, which he anticipates would cease if the quarry were allowed to operate. The location, he concluded, is especially detrimental to him because his operation could be prevented from expanding or worse, may cease.

Identification of the Quality and Extent of the Resources:

Mr. House has testified that the eight-month period of extraction in 2002 confirmed his opinion that the stone is of a high quality and there is sufficient availability on this property; he expects that there will be approximately 60 years of extraction on the site. Mr. House gave evidence that although he has had no formal training, he is well experienced in this field as he has had many years working with stone.

The Peninsula Lake Association has challenged this claim on the basis that granite is widely available in the Muskoka area and there is no expert geological opinion to confirm Mr. House’s assertion that the material is only available over an approximately 14-kilometre area between Deerhurst and Dwight. The Association does not accept that this requirement has been fulfilled by the Applicant.

Protection of Surface and Ground Water:

The Applicant has provided expert hydro-geological evaluation of the subject site. There were level 1 studies conducted to determine potential for adverse impacts on surface and ground water resources in the area, and the conclusion was that there does

not appear to be any such impact. The proposed quarry is expected to remain above the water table and therefore the Applicant's hydro-geologist saw no need for level 2 studies to determine the effect on wells in the area. However, the recommendation is that if the quarry goes within 5 metres of the water table, wells in the area should be monitored. The evaluation concluded that there would be no adverse effects from extraction on the stream and wetlands on the subject property and it is likely that ground water would be enhanced by the removal of rock which limits permeability to cracks and fissures.

The Peninsula Lake Association experts concluded there was not sufficient evidence to warrant an approval of the proposed zoning amendment. The baseline conditions, they said, have not been established and there is no documented evidence to demonstrate that there would be no impacts generated to the water quality or quantity of the creek.

The Township of Lake of Bays expressed no dissatisfaction with the Applicant's hydro-geological report, which they had reviewed.

Protection of Environmentally and Aesthetically Sensitive Areas or Features:

A Natural Environment Study undertaken by Kristawyn Environmental Consulting and supplemented by Gartner Lee Limited found that there are no threatened or endangered species on the subject property and the wetlands are not significant. The site is a browse habitat with a provincially significant deer yard but this feature will not be compromised by a well designed quarry. The stream on the property is considered to be a sensitive cold water fish habitat.

The reports concluded that no significant negative impacts on the sensitive natural features are anticipated from the operation of a quarry, provided that recommendations outlined in both reports are implemented. These recommendations have been implemented on the site plan. Of particular note, is the recommendation to construct a series of permanent rock check dams at 25 metre intervals, for a total of 12, to prevent silt and sediment generated from the road from entering the watercourse.

There are to be two of these dams close to the quarry to ensure that sediment from the operation remains in the quarry. Each dam is to be maintained on a weekly basis. Maintenance will involve removal of sediment to an area not yet rehabilitated on the quarry floor and any repair that is needed to the structure of the dams.

A replacement culvert is to be constructed along the quarry access road to provide a stable unimpeded crossing of the tributary. The Applicant has initiated talks with the Department of Fisheries in this regard.

Impact on the Surrounding Uses and Properties:

The Applicant submits that there would no unacceptable impacts on the surrounding land uses and properties from the operation of a dimensional stone quarry on this site. A dimensional stone quarry is a low impact operation compared to an aggregate quarry. The Applicant has observed that there are two other dimensional stone quarries in the immediate vicinity that are for the most part unregulated and are operating in harmony with the surrounding land uses.

The most contentious issues that have arisen from this application are visual impact and noise. The evidence noted above from the Hillside Community is also relevant to this requirement but in addition there was extensive evidence from the Lakeshore residents on both visual impact and noise which was sufficient to convince the Board that the impact on the community would be significant and mitigation could not be easily achieved.

Visual Impact:

This issue is the primary focus of the Township's objection.

The Applicant produced visual impact studies to support its claim that the quarry does not create any visual impacts when viewed from the Lake or from the residences on the lakeshore. This is especially so in the summer when the foliage is full. During leaf off conditions the location of the quarry is discernable but minimally so. The Applicant

argues that the test is not zero tolerance for visible impact but rather the requirement is to minimize the impact.

Development overlooking the lake is required to be sympathetic to the natural landscape. Ridgelines and skylines are to be protected in accordance with Official Plan Policies. Already the ridgeline has been altered by this development. In 2002 the Applicant cleared a triangular notch to accommodate the quarrying activity that took place then. The applicant has undertaken to replace that cleared area but it will be some time before the growth will be sufficient to fill in the clearance.

The opposing parties submit that it is the landscape of rocks, water and trees that draws people to live and play in the area and that defines the character of the area. The preservation of these features is vital to the tourist industry and so the Township's Official Plan gives clear direction for vistas and panoramas to be preserved. To conform to these policies the quarry, which does not reflect the character of the community, should not be visible from the lake or the residents on the lakefront at any time of year.

Mr. Hammond, the Planner for the Township, submits that there is no provision as to the time of year that this policy applies and further, many of the residents on the lakefront are permanent residents. Part of the extraction area would face the lake and the tree buffer is deciduous. As more trees are cleared to accommodate extraction, the quarry would become more visible in leaf off conditions. This is in contrast with the other legal non-conforming quarries in the area, which cannot be seen from the lake as they are situated on the other side of the hill. Mr. Hammond concluded that with the location of the quarry on the knob of the hill, the visual impact cannot be mitigated.

The Board found on the site visit to the Lake and the water front area that the site was not obvious because of the dense foliage during the summer. However, the Board accepts the evidence of two lakeside residents that the site is clearly visible from their homes in leaf off conditions and the Board accepts the opinion of Planner Hammond and finds that the proposal would conflict with the official plan policies dealing with the preservation of vistas and panoramas.

Noise:

Noise is by far the greatest cause for objection to the application. The Applicant's noise report concluded that the application meets the Ministry of Environment (MOE) guidelines and that there would be no unacceptable adverse impact from noise caused from quarrying activity. The applicant's expert determined that noise emissions from the operation especially with the removal of the guillotine and the crusher would fall well within the MOE compliance levels using the closest residences on Highway 60 and the closest waterfront residence as receptors.

The Applicant's evidence on blast impact indicates that low level explosives would be used in this kind of operation and would cause minimal vibration at the nearest receptor. His opinion is that normal household activity would exceed the noise from the blasting operation.

This was not accepted by the expert retained by Peninsula Lake Association who had concerns with the variability of sounds across the water depending on weather conditions and the attenuation values that the Applicant's expert attributed to the deciduous tree buffer.

The residents around the Lake and the immediate vicinity of the subject site had a different perspective on noise emission from the operation. Their perspective was based on their experiences over the eight-month period that the quarry operated. In his statement on behalf of the Lake of Bays Association, Counsel Karl Jaffery submitted that the Applicant relies on decibel levels but those results are in conflict with the actual reality. Mr. Jaffery submitted that normally, great reliance is placed on expert evidence which can be conflicting; however, this particular application had the enormous benefit of experience with actual operation of the quarry.

At an evening session, at which there was a very large turnout, the Board heard evidence from twenty area residents. Prior to that evening the Board cautioned against repetitive evidence. There was a concerted effort to abide by those terms. The members of the community each had a different tale to tell of their individual experience with the eight-month trial run of the quarry. There was overwhelming evidence that the character of the area was greatly altered during the summer of 2002. The evidence was that the sounds of nature were replaced by the chronic operating noises from the

quarry. The banging and clanging from the operation was highly disturbing. This started as early as 6:00 am and continued until well into evening, not unlike what is proposed in this application. Seasonal cottagers, as well as permanent residents, were affected. Those who could, left their homes to find relief. One resident in the vicinity gave up her job as a night nurse because the disturbance of the operation prevented her from sleeping during the days. After the injunction was issued for the quarry to cease operation, she resumed her job.

The President of Peninsula Lake Association emphasized that its members are not anti-quarry or anti-business. The existing quarries in the area are among its members and the Association has no official position on whether quarries ought to be allowed. The President of the Association testified that its opposition is based on the illogical citing of the quarry.

Mr. Walker, a party to these proceedings submitted that the project threatens the historic use of the Lake and this opinion was echoed by Mr. Moffatt, a resident in the area for 48 years, who observed that no amount of buffering can preserve the peace and quiet which is the character of the Peninsula Lake Region. Should this proposal be allowed, this area, now devoid of construction noise, will have this intrusion six days per week, 15 hours per day for the next 60 years. That character of peace and quiet would be lost for decades.

The detailed evidence of Cathy Purvis on the ambient conditions of the Lake in the early morning when she goes to the water, which she described as calm and quiet, would be changed for many years as it was that summer when the sounds came from the subject site.

The Applicant has testified that the noise in 2002 was excessive compared to the current proposal. Blasting, for example, would be greatly modified and in compliance with the recommendation of the expert retained. Building the access road and clearing the excavation area also greatly contributed to the noise levels during the 2002 period.

That notwithstanding, the Board is unable to conclude that the conditions that draw people to Peninsula Lake would be the same with the sounds of construction in the background even if those sounds are within acceptable guidelines. In the Board's

opinion, the test is whether those sounds would alter the character of the lake and its surroundings. The Board finds that to be the case.

Having considered all the evidence, the Board finds that the Applicant is unable to overcome the constraints that the location imposes. The site, which is in close proximity to and overlooking Peninsula Lake, creates an additional burden for the Applicant to satisfy those clearly articulated Official Plan policies with respect to preserving the character of that area. In a different location the Application might have met and exceeded the requirements necessary to permit the use sought.

However, the Board finds that a quarry in this particular location would directly conflict with the policies set out in the Official Plan for the Township of Lake of Bays and especially the principles that guide growth. The Plan directs that the character and heritage of the Township and the area will be preserved and complemented. The Board finds that would not be the case if this application were to succeed. The Board does not accept the Applicant's assertion that the presence of the other two quarries defines the character of the area. The overwhelming evidence from the area residents is that those quarries have little or no impact on their lives, which is in stark contrast to the impact felt from the 2002 operation on the subject site.

The Board finds that the development would conflict with the vision of the Peninsula Lake Plan to preserve the historical character of the Lake and its tranquil ambience. The evidence was clear that the chronic construction sounds from the daily operation of the quarry would alter the peaceful character of the area.

The Applicant submits that the importance of the Mineral Aggregate Resources to the Province's economic well being must be recognised as directed by the Provincial Policy Statement; this has to be balanced against the other competing interests in the area. The Board agrees and finds that in this context, consideration must be given to the nature of the resource in order to weigh that balance. The Applicant has put forward a compelling case that dimensional stone is in great demand and short supply. However, during the course of the hearing the other parties repeatedly drew to the Board's attention that dimensional stone is a non-essential "decorative" or "architectural" stone as opposed to aggregate; the same importance, therefore, ought not to be

attached to dimensional stone as to aggregate, which is required for building roads and for other construction.

While the Board does not purport that only non-essential resources should be protected, the Township's Official Plan states that primary resources should be protected where appropriate and the Board finds that in this case the location of the quarry is inappropriate. The Township's Official Plan clearly states that foremost consideration is to be given to the tourism base and that the Township's most important assets are its character, heritage and natural environment.

The Board finds that the importance of preserving Tourism in this area, and the elements that contribute to that industry, such as the landscape and character, outweighs the demand for dimensional stone.

The Board's Finding:

The Board finds, for the reasons stated above, that the proposal is in conflict with Official Plan policies for the Township of Lake of Bays. The Board finds that the character of the rural residential area and the character of the lake and its surroundings would be altered by the presence of the dimensional stone quarry in that location. The Board finds that the proposal does not constitute good planning.

Accordingly, the Appeal is hereby dismissed.

This is the Order of the Board.

"K. J. Hussey"

K. J. HUSSEY
MEMBER

